

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1672 of 1997

in

SPECIAL CIVIL APPLICATION NO 3716 of 1985

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

YUNUS AHMED PATEL

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for Appellant
GOVERNMENT PLEADER for Respondent No. 1
MR RJ OZA for Respondent No. 2
MR SP HASURKAR for Respondent No. 3

CORAM : ACTG. CHIEF JUSTICE MR.C.K.THAKKAR and
MR.JUSTICE C.K.BUCH

Date of decision: 03/11/1999

CAV JUDGMENT : [Per C.K.BUCH, J.]

This Letters Patent Appeal is preferred against
the judgment dated 3rd March 1997 passed by the learned

Single Judge in Special Civil Application No. 3716 of 1985. The appellant is the original petitioner and for the sake of convenience, he will be referred to as the "petitioner" hereinafter.

The petitioner had filed a petition challenging the order dated 14th February, 1985 - Annex.J to the petition under which services of the petitioner were terminated by the Deputy Secretary, Education Department of respondent no.1 State. The petitioner challenged the said order on the grounds enumerated in the main petition and after appreciating the facts available on record, the learned Single Judge dismissed the said petition vide the impugned order dated 3rd March, 1997. Before filing present Letters Patent Appeal, the petitioner had approached the learned Single Judge with a review application being Misc. Civil Application No. 869/97, but the same was dismissed and according to the petitioner, he was advised to file Letters Patent Appeal and, therefore, the petitioner has preferred the present Letters Patent Appeal.

When services of the petitioner came to be terminated, he was Lecturer in Law in a government college. The case of the petitioner is that prior to his appointment to the post of Lecturer-in-law, he was serving in the Revenue Department in the cadre of Class:II Gazzetted Post. He was selected and appointed as District Inspector, Land Records, and was posted for the first time on 4th August, 1979 at Dhrangadhra. The petitioner was thereafter transferred to Amreli and from Amreli to Porbandar on 26th October, 1982 as Superintendent, City Survey. In response to an advertisement published in Times of India issued by the Gujarat Public Service Commission (GPSC for short) inviting applications for the post of Lecturer in Law, and as the petitioner was eligible, he applied for the said post and after due process of selection, he was selected and came to be appointed as Lecturer in Law. It would be appropriate to clarify that the petitioner had applied for advertised post of Lecturer in Law through proper channel and it is not the case of the respondent State that the petitioner had got himself selected and appointed by indulging in any mal practice.

When the petitioner was working with the Land Record Department and under the administrative control of the Settlement Commissioner, State of Gujarat, he applied for the post of Lecturer in Law to GPSC and, therefore, according to the petitioner, he was selected for higher post with the due consent or assent of the department. According to the petitioner, post of Lecturer in Law is a higher post and as the petitioner was selected through

GPSC, he was appointed with effect from 3rd August, 1984. The Education Department, vide order dated 14th February, 1985, all of a sudden terminated the services of the petitioner without serving any notice or without affording any opportunity of being heard. The order of termination, according to the petitioner, was passed without assigning any reasons. The order of termination of services was challenged by filing above-numbered writ petition and Education Department resisted said petition by filing affidavit-in-reply. We would like to refer to and reproduce relevant portion of the said affidavit as under:-

" I say and submit that the petitioner joined the duties in this department from 3rd August, 1984. However, the Settlement Commissioner, Respondent no.3 herein vide his letter dated 20.12.1984 informed the Director of Higher Education about the fact of the petitioner being under suspension since January, 1984 and that he was chargesheeted and the inquiry is pending against him. Thus, it would be evident that though the petitioner was under suspension while he was working under the respondent no.3 and further the departmental inquiry was pending against him, the petitioner kept convenient silence about the fact and accepted the appointment as a Lecturer in Law in Education Department. It is pertinent to note that even in the suspension order, it is made clear that the person who is suspended shall not accept even the private employment during the suspension period whereas the petitioner has made an attempt to seek the appointment in this manner in another Government Department.

Thus, as I have stated hereinabove, these facts were brought to the notice of the department (petitioner being under suspension and the departmental inquiry pending against him) and in this manner, an attempt was made by the petitioner to seek the employment, it was thought fit to terminate the services of the petitioner who has made an attempt to seek the employment in the manner stated herein above.

I say and submit that the reference about the procedure of the Government Circular dated 16.6.77 is misleading inasmuch as it refers to the normal cases where the performance of a person appointed on a probation is required to be

assessed before his confirmation or terminating his service on the ground of unsuitability whereas in the present case the services of the petitioner were terminated in the circumstances stated herein above where the petitioner has to make an attempt to seek the appointment suppressing the facts and is led the respondents. Without prejudice to the facts narrated above, it is pertinent to note that the assessment report of the petitioner with the department would show that he could not be continued in the department."

It is contended by the petitioner that before his entry as Lecturer in Law in Education Department in the month of August 1984, suspension order was passed on 10.1.1984 by the Land Record Department, but hard reality is that he was never suspended or relieved effectively and was permitted to continue with his duties which he was performing at Porbandar Office in the capacity of the City Survey Superintendent. Number of documents are shown to us by the petitioner during the course of his oral submissions and we are satisfied that the alleged suspension order was not effectively implemented till the petitioner left the office of the Superintendent, City Survey, Porbandar and joined his new assignment with the Education Department. Learned Single Judge, at the time of dealing with Special Civil Application preferred by the petitioner, has hammered mainly on two aspects; (i) that the petitioner concealed a very important fact before joining the Education Department that he was placed under suspension and the said order of suspension is yet not formally revoked by the Land Record Department especially when he was not accepting any private employment during the period of alleged suspension, and (ii) the petitioner did not disclose the fact that he was served with chargesheet in connection with his earlier employment with the Government and he ha no formal permission from his department to join the post of Lecturer in Law. Learned Single Judge has observed that if his department (Land Record Department) had permitted the petitioner to join post of Lecturer in Law, then the matter would have been on different footing. But after going through the chain of events on which the petitioner heavily relies, we feel that the Settlement Commissioner - appointing authority of the petitioner in Land Record Department, was aware about the fact that the petitioner is going to leave the department to join his new assignment in the Education Department. The petitioner has not disputed that formal order of suspension was passed and he was served with the chargesheet prior to his entry in the Education Department. According to him,

on 14.3.1984, he had approached the police authorities for Clearance Certificate and District Supdt. of Police, Porbandar had issued Clearance Certificate on the very same day i.e. 14.3.1984. The appointment order issued by the Education Department is of 15.6.1984. The above suspension order was not effectively implemented and the petitioner was performing his usual duties as Supdt. City Survey, Porbandar and was kin to leave the department. He had served notice to the Settlement Commissioner by Regd.A.D. Post under a letter dated 9.7.1984. The said letter-cum-notice-cum- intimation had reached the office of the Settlement Commissioner and according to the petitioner, after a long period, on 2.8.1984, Settlement Commissioner relieved the petitioner from his duty. We are shown one document on the basis of which it can be legitimately inferred that till 2nd August, 1984, the petitioner was working in the office of the Supdt., City Survey, Porbandar and he had handed over charge of his office to his immediate next senior member of the staff and had joined the Education Department on 3.8.1984. The petitioner has tried to enlighten on various facts, but we do not feel it necessary to go into the larger question and to appreciate all these facts and/ or aspects, but it seems that the learned Single Judge, while dismissing the writ petition of the appellant, had taken a view that suppression by the petitioner was a grave concealment and "the Land Record Department who had initiated the departmental inquiry, must have completed the inquiry by now." Learned Single Judge has held the petitioner responsible for not bringing to the notice anything about the outcome of the departmental inquiry initiated against the petitioner by the Land Record Department. Learned Single Judge observed that " in such matters, it is the duty of the petitioner to bring on record the relevant and subsequent events and developments that have taken place. However, in case the inquiry is not completed so far, it is expected of the respondent Revenue Department to complete the same as expeditiously as possible."

It is important to note that till the date of filing of the present Letters Patent Appeal, the department had not made any endeavour to complete alleged departmental inquiry initiated against the appellant nor has made any categorical statement about the outcome of such departmental proceedings even today. State Government may have various departments for efficient administration of its business and/or duty but it would not be logical or legal to hold that the matter in which a jurisdiction of the High Court is invoked, different departments of State Government can legitimately take different stand. Act of putting a curtain on certain

facts by one department cannot help the another, unless defending department can legitimately satisfy this Court as regards to their respective stand. Learned Single Judge ought to have appreciated one important issue raised by the petitioner which in reality goes to the root of the matter i.e. as to whether order terminating the services of the petitioner was termination simpliciter or the same is stigmatic termination. Time and again, this Court as well as the Apex Court have said in their judicial pronouncements that the language of the order terminating services is not important if it is established that same conceals the facts relating to termination or reason or reasons. The appellant has rightly relied on a decision in the case of Jagdish Prashad v/s Sachiv Zila Ganna Committee, Muzaffarnagar, AIR 1986 SC 1108, wherein it has been observed that where the services of an employee were terminated on the ground that he concealed the fact of his removal from service under former employer on the charge of corruption at the time when he applied for the post without giving him an opportunity of hearing at all before making order of termination of his services, the order of termination cannot be said to be innocuous order. The ratio as propounded by the Apex Court in the case of Jagdish Prashad (Supra) is equally applicable to the case of the appellant. The grievance of the appellant is that the learned Single Judge has not appreciated ratio laid down in the aforesaid decision while dealing with the facts of the case of the petitioner though they are similar in nature. The appellant has also placed reliance on the decision in the case of Mansukh Madhavji Muliyana v/s Indian Oil Corporation Ltd., and Another, 1989(1) GLH (U.J) 24, wherein this Court (Coram : S.B.Majmudar & J.P.Desai, JJ) has held that though termination order dated 15.10.1985 seems to be an order of termination simpliciter and without mentioning that the said order was passed in accordance with the conditions of service on the ground that antecedents were not found to be satisfactory the petitioner should have been given a chance to explain as to what types of cases were pending against him. We would like to quote relevant portion relied on by the petitioner- party-in-person which reads as under :-

" It sought to be made out on behalf of Corporation that the petitioner's termination is a simpliciter order of termination and not by way of penalty. But the affidavit-in-reply filed by the Corporation before the learned Single Judge shows that because of the police report showing involvement of the petitioner in one of the

cases, the services of the petitioner were not terminated. This shows that the foundation for passing the order of termination was involvement in criminal cases and this cannot be said to be an order of termination simpliciter."

Division Bench of this Court, while dealing with the aforesaid case of Mansukh Madhavji (Supra), has considered the decision of the Division Bench of this Court in the case of Anopsinh Jatubha v/s V.K.Gupta, Dist. Police Officer, Jamngar, 1986 GLH 136 = 1986(2) GLR 753.

In the instant case, the order challenged by the petitioner in the writ petition, ex-facie, did not cause any stigma, but the reason for removing the petitioner from the post of Lecturer-in-Law available on record clearly indicates that it was a stigmatic and punitive termination. The resultant effect of the stigmatic and punitive order of termination ought to have been considered by the learned Single Judge from different angles. The petitioner party-in-person has also placed reliance on the following decisions :-

- (i) Ramniklal G.Gohil v/s District Supdt. of Police, Amreli & Anr., 1993(2) GLR 1555.
- (ii) S.R. Patel v/s State of Gujarat & Ors., 1983 GLR 740.
- (iii) Radhey Shyam Gupta v/s U.P. State Agro Industries Corporation Ltd. and another, AIR 1999 SC 609.
- (iv) Sub-Divisional Soil Conservation Officer and another v/s M.M.Saiyed, 1991 Lab.I.C. 662.

The aforesaid decisions squarely apply to the case of the present petitioner. The report and/or finding recorded by the Inquiry Officer are the foundation of termination order and, therefore, it cannot be argued that as they supply merely a motive of termination, the order can be termed as punitive order. It is not the matter of dispute that the petitioner was not served with any notice prior to termination. The petitioner has rightly argued that the date on which writ petition was heard by the learned Single Judge, many years had lapsed and even then, in fact, the alleged departmental proceedings have not been proceeded, if initiated. It is important to note that there was no specific submission before the learned Single Judge from the respondent State as to the stage of allegedly initiated departmental proceedings against the petitioner or about its outcome. The language of the order under challenge indicates this contingency.

According to us, the order terminating the services of the petitioner was not an order of termination simpliciter, but the same was punitive, stigmatic and such order could not have been passed without affording an opportunity of being heard and complying with the principles of natural justice grave. A breach whereof is committed. In our view, the learned Single Judge ought to have appreciated the facts of the case in light of the above settled legal position and if he had done so, then a different finding would have been recorded.

It is important to note that the day on which the petitioner approached this Court for the first time by filing a writ petition, he also prayed for ad-interim relief and the impugned order of termination passed by the respondent State was stayed by the learned Single Judge while admitting said petition. So, even on the

date when petitioner argued Letters Patent Appeal in person, he was very well in government service.

Mr. R.J.Oza, learned counsel appearing for GPSC has submitted that the duty of the GPSC was to recommend the name of the petitioner as he was found otherwise fit for the post of Lecturer in Law and was selected and thereafter posted on the said post in a government College. So, GPSC has nothing to say about other factual aspects and the GPSC was not the party in passing the impugned order of termination passed by the Education Department.

For the reasons aforesaid, Letters Patent Appeal is allowed. The impugned order of termination dated 14.2.1985 passed by the respondent no.1 Education Department at Annex.J terminating the services of the petitioner- appellant is hereby quashed and set aside. Respondents are directed to continue the petitioner on the post of Lecturer in Law and extend all benefits which he is otherwise entitled to get.

The petitioner has drawn our attention to one circular issued by the Government of Gujarat dated 6.4.1965 and to other subsequent circulars as regards the question connected with reinstatement of a government servant whether suspended, removed or dismissed from service. These circulars have statutory force as they are issued under statutory rules viz. under Rule : 152 of the Bombay Civil Services Rules and are in consonance with the provisions contained in Article 311 of the Constitution of India. We are not inclined to appreciate that aspect as the petitioner had joined assignment of Education Department after leaving Land Record Department where he was initially serving and had continued in

service upto now under the interim order passed by this Court while admitting the writ petition.

Without granting relief prayed in Para-25(D) of the petition, we observe that it would be proper for Land Record Department to pass appropriate orders revoking the order of suspension and initiation of departmental proceedings, if proceedings have not reached to its logical end considering the length of the period from the date of initiation of the alleged inquiry and/or passing of suspension order.

Under the circumstances, appeal is allowed accordingly. Looking to the facts and circumstances of the case, no order as to costs.

In view of above order, according to us, no formal orders are required to be passed on Civil Application No. 12784/97 and Civil Application No. 12785/97 filed by the appellant and, therefore, they treated as disposed of accordingly.

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